

**DECLARATION OF  
JOSEPH H. MARGOLIES  
ISO GOOGLE'S  
OPPOSITION TO  
PLAINTIFFS' MOTION TO  
STRIKE PORTIONS OF  
GOOGLE'S SUMMARY  
JUDGMENT REPLY**

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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

CHASOM BROWN, *et.al*, individually and  
on behalf of all similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**DECLARATION OF JOSEPH H.  
MARGOLIES IN SUPPORT OF  
GOOGLE'S OPPOSITION TO  
PLAINTIFFS' MOTION TO STRIKE  
PORTIONS OF GOOGLE'S SUMMARY  
JUDGMENT REPLY**

1 I, Joseph H. Margolies, declare as follows:

2 1. I am an attorney with the law firm of Quinn Emanuel Urquhart & Sullivan, LLP,  
3 counsel for Defendant Google LLC (“Google”) in this action. I have been admitted *pro hac vice* in  
4 this matter, Dkt. 681. I have personal knowledge of the matters set forth herein and, if called as a  
5 witness, could competently testify thereto.

6 2. The February 10, 2023 declaration of Carl Spilly, Dkt. 857-4, contains an accurate  
7 summary of Google’s correspondence with Plaintiffs between December 6, 2022 and February 9,  
8 2023, concerning Plaintiffs’ review of the source code Dr. Psounis analyzed to produce the two  
9 Psounis declarations at issue in Plaintiffs’ Motion to Strike. Exhibits 1 and 2 to that declaration (Dkt.  
10 857-4 and 857-5) are true and correct copies of the email chains containing that correspondence.

11 3. On December 22, 2022, Plaintiffs’ consulting expert Jay Bhatia spent a full day  
12 reviewing the source code Dr. Psounis analyzed to produce the two Psounis declarations at issue.  
13 *See* Dkt. 857-4 at ¶¶ 2–12.

14 4. In addition to the source code Dr. Psounis reviewed to produce the Psounis  
15 declarations at issue, Google offered an additional production of approximately 14,000 lines of code  
16 on January 10, 2023. The additional code was “included,” *i.e.*, incorporated by reference, in the code  
17 Dr. Psounis reviewed. *See id.* at ¶ 14.

18 5. On February 20 and 21, 2023, Mr. Bhatia spent two days reviewing the additional  
19 14,000 lines of source code that Google had offered for review on January 10, 2023.

20 6. On February 21, 2023, Ryan McGee, counsel for Plaintiffs, requested via email that  
21 certain portions of the source code Mr. Bhatia reviewed be printed and provided to Plaintiffs in  
22 paper form, pursuant to the Protective Order in this matter. Dkt. 81 § 9(d).

23 7. On February 22, 2023, I met and conferred with Mr. McGee concerning the scope of  
24 Plaintiffs’ request for printed source code. During our meet and confer, and in order to determine  
25 the extent to which Google would object to Plaintiffs’ request to provide printed source code, I  
26 requested that Mr. McGee confirm that “Plaintiffs’ use of [the code they requested to be printed] is  
27 limited to the [Order to Show Cause] proceedings.”  
28

1           8.       Mr. McGee stated that he understood the use of source code to be “only within the  
2 scope of responding to the court’s order to show cause” and asked if I was “able to represent whether  
3 Google will rely on source code outside of the hearing on the order to show cause.”

4           9.       I responded that I would follow up with Google’s position, and on the same day  
5 provided, via email, the representation in McGee Exhibit B, Dkt. 936-2. The email memorialized  
6 Plaintiffs’ intent not to use Google’s source code for purposes other than the order to show cause  
7 proceedings. It further represented that “Google likewise does not intend to rely on source code for  
8 purposes other than the OSC,” but included an express reservation of rights “to rely on the code on  
9 which it has already relied in the course of responding to the OSC” “to the extent Plaintiffs later put  
10 the [REDACTED] log at issue and claim it joins authenticated and  
11 unauthenticated data.”

12          10.       Plaintiffs did not object to Google’s characterization of Plaintiffs’ position or to  
13 Google’s statement of its own position, including its reservation of rights.

14          11.       Also on February 22, 2023, Plaintiffs’ counsel wrote to Judge van Keulen’s chambers  
15 via email to request that Judge van Keulen compel Google to make two witnesses—Martin Šrámek  
16 and Andre Golueke—available at the March 2, 2023 order to show cause hearing for cross  
17 examination. A true and correct copy of Plaintiffs’ February 22, 2023 email to the Court, along with  
18 responses from Google and the Court, is attached as **Exhibit A**.

19          12.       On February 24, 2023, Plaintiffs’ counsel confirmed via email that Plaintiffs’ experts  
20 would not submit an additional declaration following review of Google’s supplemental source code  
21 production.

22               I declare under penalty of perjury of the laws of the United States that the foregoing is true  
23 and correct. Executed in Bayside, Wisconsin on May 1, 2023.

24  
25  
26                               By           /s/ Joseph H. Margolies            
27                               Joseph H. Margolies  
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